No. ~~796~~ 30

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

DANIEL D. GLASSER,

Petitioner,

v.

UNITED STATES OF AMERICA.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF FOR PETITIONER

SUGGESTION OF A DIMINUTION OF THE RECORD AND MOTION FOR A WRIT OF CERTIORARI

HOMER CUMMINGS,
WILLIAM D. DONNELLY,
Counsel for Petitioner.

PRESS OF JUDD & DETWEILER, INC., WASHINGTON, D. C.

INDEX.

REPLY BRIEF.

Concordance:	Petition Page	Gov't Brief Page	Reply Brief Page
1. Petitioner, by action of the trial court and through no fault of his own was deprived of effective assistance of counsel and of due process of law in violation of the Fifth and Sixth Amendments	8	23	5
2. The jury was packed by the illegal delegation of their duties by the Clerk and the Jury Commissioner, who violated the petitioner's right to an impartial trial and deprived him of his liberty without due process of law	12	18	3
3. The record fails to disclose that there was an indictment returned against this petitioner by any grand jury in open court or otherwise	15	10	1
4. Improper conduct of the prosecuting attorney clearly violated the right of petitioner to a fair and impartial trial	19	36	..
Loss of Exhibits 205 and 206	21	38	9
Surreptitious submission of exhibit 92	24	39	10
5. The action of the judge effectually deprived petitioner of the presumption of innocence and denied him a fair and impartial trial	24	31	..
Absence of objections	..	32	8
Admission of hearsay reports, Exhibits 81A and 113	31	29	6
6. The record is utterly devoid of evidence to support the verdict against petitioner	31	40	14
The evidence as reviewed by the court below	32	..	..
Total lack of evidence of knowledge on the part of petitioner of the alleged conspiracy	47	42	14
7. A charge of conspiracy to commit a substantial offense, which itself necessarily involves concerted action—that is, a charge of conspiracy to conspire—will not lie; and, as such is the charge, if any is here made, the indictment is fatally defective	50	25	12
Appendix—Trial court motion slip	..	..	..

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SUGGESTION OF DIMINUTION OF THE RECORD AND MOTION FOR A WRIT OF CERTIORARI.			
Reasons for motion	..	..	22
Certified copy of verdict	..	..	23

CITATIONS.

Cases:

	Page
Adler v. *United States*, 182 Fed. 464	8
Brady v. *United States*, 39 F. (2d) 312	11
Brown v. *United States*, 145 Fed. 1	13
Charge to Grand Jury, 30 Fed. Cas. No. 18255	7
Crain v. *United States*, 162 U. S. 625	3
Dowdy v. *United States*, 46 F. (2d) 417	11
Ex Parte Bain, 121 U. S. 1	3
Ex Parte Wilson, 114 U. S. 417	3
In re Grand Jury, 62 Fed. 840	7
Johnson v. *Zerbst*, 304 U. S. 458	3
Leadbetter v. *United States*, 108 Fed. 52	1
McCandless v. *United States*, 298 U. S. 342	12
Ogden v. *United States*, 112 Fed. 523	12
Oliver American T. Co. v. *Government of Mexico*, 5 F. (2d) 659	4
Patton v. *United States*, 281 U. S. 276	6
Pointer v. *United States*, 151 U. S. 396	3
Renigar v. *United States*, 172 Fed. 646	1, 3
Snyder v. *Massachusetts*, 291 U. S. 136	6
Tumey v. *Ohio*, 273 U. S. 510	6
United States v. *Dressler*, 112 F. (2d) 972	12
United States v. *Farrington*, 5 Fed. 343	7, 8
United States v. *Kilpatrick*, 16 Fed. 765	7, 8
United States v. *Manton*, 107 F. (2d) 834	13
Vicksburg & Meridian Rail'd v. *O'Brien*, 119 U. S. 99	11
Williams v. *United States*, 93 F. (2d) 685	8

Statutes and Texts:

R. S., Sec. 1025, 18 U. S. C., Sec. 556	3
18 U. S. C., Sec. 241	13
Title 18, U. S. C., Sec. 91	12, 13
Thompson & Merriam on Juries (1882), Sec. 696, p. 734	3

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REPLY BRIEF FOR PETITIONER.

The brief for the United States involves propositions of law so novel and misrepresentations of the record so gross as to require reply.

1. *The record fails to show indictment by a grand jury, as required by the Sixth Amendment.*——The Government asserts that the endorsement of the foreman of the September, 1939 Grand Jury and the file mark of the Clerk of the Court sufficiently disclose return by a grand jury of the indictment on which petitioner was sentenced (Gov't Br. 11). So far as the decision below may be regarded as resting on these endorsements, it is clearly in conflict with the decision in *Ledbetter* v. *United States*, 108 Fed. 52 (C. C. A. 4) and in principal with *Renigar* v. *United States*, 172 Fed. 646 (C. C. A. 5).

Neither is return of an indictment in this case shown by the entry on the motions slip (R. 39): "The Grand Jury

return 4 Indictments in open Court".[1] Such an entry affords no identification of the persons indicted or of the crimes charged in any of the four indictments referred to. It is not contended that this case involved four indictments or that any of these defendants were accused in more than one indictment. There is no more basis for assuming that the defendants were accused in one of these indictments than that they were accused in all four of them The syllogism of the Government appears to be (Gov't Br. 13):

> The paper called an indictment of Glasser in the instant case was filed September 29, 1939.
>
> The motion slip notation made on October 30, 1939, purports to show that on September 29, 1939 "The Grand Jury returns 4 Indictments in open Court."
>
> "This notation [the Government concludes] explicitly identifies the indictment in the instant case as one of the 4 indictments returned by the grand jury in open court."

This rare bit of logic requires no argument.

Even were this entry otherwise sufficient, it is plain that as pointed out in the Petition, p. 18-19, a formal order was required in order to justify its entry on the motion slip after the term. Plainly prevention of unauthorized alteration requires that the authorizing order also appear of record. And on ordinary principles the prosecution, which relies upon the entry, must show the *nunc pro tunc* order to maintain it. The record here shows no order, formal or informal, by the court; neither is there any entry indicating the existence of such an order by the court.

Petitioner, of course, was not in court on the 29th day of September and so does not know what there took place. Contrary to the Government's statement (Gov't Br. 13, note 4) however, the record does clearly show that peti-

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[1] For the full information of the court, a certified photolithograph copy of this motion slip appears in the Appendix, p. 17.

tioner contended below as he does here that the purported indictment was not returned by the grand jury (R. 142, 149).

The repeated assertion of the Government that petitioner has failed to prove that the indictment was not returned (Gov't Br., pp. 11, 13, footnote 4) necessarily involves the novel proposition that the mere production of a paper labeled "indictment" places upon the accused the burden of showing that it was not found or returned by a grand jury. This, and the Government's attempt to imply return, both run afoul of the rule that whatever is essential in a criminal proceeding to deprive a person of his liberty must appear of record. *Pointer* v. *United States*, 151 U. S. 396, 418-419; *Crain* v. *United States*, 162 U. S. 625, 645. Since there is no identification of the "indictment" as one returned by a grand jury, the record fails to show "indictment of a grand jury" within the meaning of the Fifth Amendment. *Thompson & Merriam* on *Juries* (1882) sec. 696, p. 734. The trial court was, therefore, without jurisdiction to try the petitioner for the crime with which he was thus charged and the sentence is necessarily void. *Ex Parte Wilson*, 114 U. S. 417, 429; *Ex Parte Bain*, 121 U. S. 1, 13; *Johnson* v. *Zerbst*, 304 U. S. 458, 463; *Renigar* v. *United States*, 172 Fed. 646, 648.

The defect is a matter of substance, and not of form. Indeed, the statute invoked by the Government (R. S., sec. 1025, 18 U. S. C. sec. 556) by its very terms has no application to an indictment in no way shown to have been "found and presented by a grand jury."

There is no blinking the fact that petitioner has been tried and sentenced without any showing of an indictment by a grand jury.

2. *The United States has failed to sustain as a proper exercise of discretion by the trial court the denial of the motion for new trial based on the improper composition of the*

jury list.——Clearly without basis is the Government's assertion that the denial of the motion may possibly be founded on facts possibly disclosed at the hearing on the motion for new trial but not of record (Gov't Br. 20, 21).

The record shows that the motion for new trial was entered March 8, 1940, continued to April 8 (R. 101) and to April 22 (R. 102). On the latter date arguments of counsel were heard and taken under advisement (R. 102, 1046). On April 23, 1940, petitioners filed their affidavits in support of their motions for new trial, including the affidavit of Glasser showing the delegation by the Clerk and jury commissioner of their duty of selection of jurors, so far as it related to females, to the Illinois League of Women Voters (R. 1046, 1049, 1071). "Thereupon • • • the Court overruled and denied the motions of the Defendants for a new trial" (R. 1059).

The certificate of the Court that all evidence is included in the bill of exceptions (R. 1069) confirms the fact that no evidence was introduced at the argument on the motion for new trial. Clearly, neither the Circuit Court of Appeals nor this Court will, in reviewing the question of abuse of discretion consider facts not appearing of record and not even alleged to be true. Cf. *Oliver American T. Co.* v. *Government of Mexico*, 5 F. (2d) 659, 666.

We do not quarrel with the cases cited by the Government nor the stated rule that "so long as they [the Court Clerk and the Jury Commissioner] do not abrogate [sic] their functions they are permitted • • • to exercise a reasonable degree of selectivity" (Gov. Br. 22). The point is that here the Clerk is shown to have completely abdicated his function in the selection of one-half the jury list, delegating it it to the Illinois League of Women Voters. As to those names, no degree of selectivity was exercised. That such a delegation of the duty of selection (even in the absence of an attempt at dictation by the delegee) violates the law is the clear holding of the decisions on closely compar-

able facts cited in the petition (p. 14). The Government does not even discuss or purport to distinguish these conflicting decisions. The Government attaches significance to absence of assertion that women actually served on the jury in this case (Gov't Br. 23). The verdict shows that six of the jurors serving on the petitioner's jury were women (See Suggestion of Diminution of the Record, infra., p. 6). Since the jury was drawn from the list illegally compiled (R. 1050), it is plain that petitioner's rights under the statute were seriously impaired.

3. *Vindication of the constitutional right to assistance of counsel free from conflicting obligations to another client permits no inquiry as to the prejudice suffered by the violation of the right.*—The Government does not deny that the constitutional guarantee of the assistance of counsel includes the right to counsel unembarrassed by representation of clients with conflicting interests. Acknowledgment of the existence of the right is also implicit in the holding of the Circuit Court of Appeals that the appointment of Glasser's attorney to act as well for Kretske was not "such an error as to warrant reversal" (R. 1131).

The existence and violation of the right here is clear. Indeed, the Government does not deny the existence of conflicting and adverse interests between the two defendants, Kretske and Glasser, arising by reason of the theory of the prosecution and the nature of the proof. The Government seeks merely to show that no appreciable prejudice resulted.[2]

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[2] Considerations of length alone dictated omission in the petition of the following instances in which Stewart forebore to object to testimony of witnesses involving references to petitioner not made in his presence and over which he had no control, all of which were extremely prejudicial to him: R. 297, 298, 301, 306, 244-245, 542-543, 631, 703.

It is pertinent here to note that of the numerous citations by the Government to show Stewart's defense of Glasser (Gov't Br., 24, Note 16) only three are references to testimony of witnesses as to conversations with Kretske involving Glasser (R. 246, 250 and 339). More important is the

The Government's contention is entirely irrelevant. For it converts the inquiry from one as to the denial of the right into one merely as to the degree of prejudice suffered as a result of the denial. Thus to pivot correctness of the decision below upon the question of the amount of harm done is to beg the constitutional question. This Court has long recognized that the fundamental rules of fairness guaranteed by the Constitution with regard to procedure in the course of judicial inquiry, including criminal trials, may not be disregarded by reason of the degree of prejudice which may be shown in a particular case, or by reason of the correctness of the result in the individual case. *Tumey* v. *Ohio*, 273 U. S. 510, 535; *Patton* v. *United States*, 281 U. S. 276, 292. The same principal is more fully stated by Mr. Justice Roberts in his dissent in *Snyder* v. *Massachusetts*, 291 U. S. 97, 136-137.[3]

4. *Hearsay reports made to Glasser by the Alcohol Tax Unit agents were manifestly incompetent.*—In supporting

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fact that these merely show cross-examinaiton by Stewart, whereas the basic complaint of petitioner is that Stewart failed to make necessary objections during the direct examination of the Government's witnesses. Pet., p. 10.

The allusion to the fact that Glasser was earlier represented by another attorney, Callaghan, is not pertinent here (Gov't Br. 25). Callaghan was earlier retained (R. 41) and acted as a consultant. Stewart, as is shown by entry of his appearance on January 29, 1940 (R. 95) one week before selection of the jury (R. 97), was retained shortly before, and for the express purpose of conducting, the trial. Reference to the portions of the record cited by the Government merely confirms the fact that Stewart was retained by petitioner to try the case and that Callaghan, participating only as a consultant, was permitted merely to make a number of cursory examinations of character witnesses for defendant (R. 831, 910, 1028) and of one other of defendant's witnesses (R. 823-829). He was retained for, and obviously played, a very subordinate part in the trial defense of petitioner. Contrary to the Government's unsupported statement (Gov't Br., 25), he was not present throughout the trial, absenting himself for days at a time. Manifestly, the defendant is not thus lightly to be deprived of his right of choice of counsel to represent him.

[3] While there was disagreement in this case as to the existence of the asserted constitutional right, there was no division as to the principal here invoked.

the action of the trial court in admitting Exhibits 81A and 113 against Glasser (see Pet. 31), the Government betrays a shocking disregard of the fundamental law which protects against unfounded accusation (Gov't Br. 29). It is well established that in the presentation of evidence before a grand jury it is incumbent upon the prosecuting officer to see that only competent evidence is introduced. *United States* v. *Farrington*, 5 Fed. 343, 347; *United States* v. *Kilpatrick*, 16 Fed. 765, 771; *In re Grand Jury*, 62 Fed. 840, 846. The rule was stated by Mr. Justice Field in charging a grand jury in California (Charge to Grand Jury, 30 Fed. Case No. 18255 at p. 993).

> "In your investigations you will receive only legal evidence, to the exclusion of mere reports, suspicions, and hearsay evidence. Subject to this qualification, you will receive all the evidence presented * * *."

Referring to Exhibits 81A and 113, which were reports as to Kaplan's connection with stills on Western Avenue and in Spring Grove, made to Glasser by Alcohol Tax Unit agents, the Government asserts (Gov't Br. 30):

> "Although the reports implicated certain individuals, a 'No Bill' was returned against them. These reports were of course not offered for the purpose of proving the commission of the liquor violations therein described, but to show what Glasser had before him when he acted in these cases."

While thus protesting that these reports were not on the trial of Glasser offered as evidence to prove the fact of liquor law violations by the persons therein accused, the Government in its brief asserts that the same Spring Grove report was competent evidence of such liquor law violations for it says (Gov't Br. 6):

> "Available evidence was not used by Glasser upon these presentations (R. * * * 602)"

and (Gov't Br., 9):

> "The record discloses many instances of Glasser's failure to utilize available information and evidence in securing indictments * * * (* * * R. * * * 602, 609, * * *).

Plainly then reports were not "available evidence" for grand jury use. Prosecuting officers, in the presentation of evidence to a grand jury sustain an important duty both to the individual and to the public to avoid return of accusations founded upon hearsay evidence which cannot be sustained upon trial. *United States* v. *Farrington*, 5 Fed. 343, 345. As was said in *United States* v. *Kilpatrick*, 16 Fed. 765, 771:

> "The prosecuting officer is presumed to be familiar with the rules of evidence, and it is his duty to take care that no evidence is received by the grand jury which would not be admissible in a court upon the trial of a cause. I Whart. Crim. Law, § 493."

Yet the Department of Justice in its brief joins with the courts below in approving the action of the prosecutor in pilloring petitioner and subjecting him to the infamy of criminal trial for the mere observance and discharge of his plain duty to forebear from presentation of incompetent evidence against accused persons.

5. *Lack of impartiality by the trial court is shown by the record excerpts quoted, whether considered alone or in context.*——Plainly without weight is the ingenuous suggestion that no objection was made to the improper statements and interrogations of the court (Gov't Br. 32). In *Williams* v. *United States*, 93 F. (2d) 685 (C. C. A. 9)—quoting with approval from *Adler* v. *United States*, 182 Fed. 464, 472-473—the court said (p. 690-691)

> counsel are not held to strict accountability for failure to object or except when the questions are asked

by the court. " * * Besides, the defendant's counsel is placed at a disadvantage, as they might hesitate to make objections and reserve exceptions to the judge's examination, because, if they make objections, unlike the effect of their objections to questions by opposing counsel, it will appear to the jury that there is direct conflict between them and the court."*

6. *As to misconduct of the prosecuting attorney, the record clearly charges the prosecutor with responsibility for loss of exhibits and suppression of evidence.*——After having retained sole possession of all exhibits for a period of almost five months after the close of the trial, the Government now seeks to avoid responsibility for loss of Exhibits 205 and 206 (See Pet. 20-21) by the naked assertion of the prosecutor that they had never been in his possession (Gov't Br. 38, note 30).

The record shows, as stated in the petition (p. 21) that the Government had possession of the exhibits in this case from the date the verdict was returned, March 8, 1940, until July 31, 1940. The petition of the defendants for production of missing exhibits (R. 1094-1095) alleged that until the latter date, "no exhibits had been forwarded to the Clerk" of the Circuit Court of Appeals and that on that date the Clerk of the District Court, upon demand of the Clerk of the Circuit Court of Appeals therefor, merely referred him to the Assistant United States Attorney; that on the same date certain exhibits were by the United States Attorney delivered to the Clerk of the District Court and on August 2, 1940 by him certified to the Clerk of the Circuit Court of Appeals (R. 1095).[4] The answer of the United States At-

[4] Indeed, the certificate of the Clerk of the District Court embodies a receipt to the United States Attorney and shows that transmission and certification was confined to the exhibits received from the United States Attorney (R. 1075).

torney (R. 1096) admitted all of these allegations and affirmatively stated—

> "all of the exhibits in the trial of the case [with an exception not here pertinent] are in the possession of the Clerk of the Circuit Court of Appeals".

But when further pressed for the production of seven exhibits omitted from the certification by the Clerk, including Exhibits 205 and 206 (R. 1098), the United States Attorney asserted merely that these were defendants' exhibits and had never come into his possession (R. 1100). It is pertinent to note that all of petitioner's other exhibits were received by the United States Attorney at the close of the trial and were subsequently by him delivered to the Clerk of the District Court. See, for example, Glasser's Exhibits No. 197, R. 912; No. 199, R. 913; No. 202, R. 921; No. 203, R. 922; No. 204, R. 948; No. 207, R. 953, all shown by the Clerk's certificate to have been received from the United States Attorney (R. 1075, 1088).

It is submitted that the defendant's statutory right of appeal has little or no substance if the Government may, as here, take from the Clerk all exhibits in a case, lose, suppress or destroy certain of the more important documents and then be exonerated by a mere denial of possession. There is no suggestion that the petitioner ever obtained these exhibits. Responsibility therefore rests either with the Government or with the Clerk. Such slipshod practices in substantial impairment of defendant's rights cannot properly be countenanced by any court of justice.

7. *As to Exhibit No. 92, reversible error is apparent*—As pointed out in the petition (p. 24), objection to introduction of this exhibit was sustained (R. 712). The Circuit Court of Appeals and the Government (Gov't Br. 39-40) assert that Exhibit 92 is shown by the record not to have been ad-

mitted. The opinion of the Circuit Court of Appeals states its reasoning (R. 1132):

> "It also appears that on May 17, 1940 the trial court entered an order directing the Clerk of the District Court to certify and send to this court all of the exhibits introduced on behalf of the parties. The Clerk of the District Court, in so certifying, does not certify that Exhibit 92 was sent to the jury. From the record thus appearing we are unable to say that these exhibits were sent to the jury."

The Government adopts this theory (Gov't Br. 40).

The vitiating flaw in this argument is that, despite the order of the District Court (R. 1092), the Clerk declined to state in his certificate that "*all*" exhibits introduced were certified and transmitted. His certificate states that he transmits only "*certain*" exhibits (R. 1075).

The bill of exceptions showing surreptitious submission of this important exhibit (R. 1034) thus stands uncontradicted and the conclusion of the Circuit Court of Appeals and the Government is utterly unfounded.

The Government does not deny and an inspection of this exhibit will show that this pretrial statement of Raubunas (Ex. No. 92), was corroborative of and consistent with his testimony at the trial (Gov't Br. 40). In square conflict, therefore, with a decision of this Court and as well with holdings in other circuits is the contention of the Government that petitioner was not prejudiced by admission of this exhibit. Admission of a pretrial written statement corroborative of or consistent with testimony of a witness at a trial is uniformly held to be reversible error. *Vicksburg & Meridian Railr'd* v. *O'Brien*, 119 U. S. 99, 101-103; *Brady* v. *United States*, 39 F. (2d) 312, 315 (C. C. A. 8); *Dowdy* v. *United States*, 46 F. (2d) 417, 424 (C. C. A. 4) and authorities cited. As stated in the Petition (p. 24), this pre-

trial statement was highly prejudicial since it was one of the few items tending in any way to connect petitioner with the other defendants. The Government has failed utterly to sustain its burden of proving that the erroneous submission of this exhibit was not prejudicial. *McCandless* v. *United States*, 298 U. S. 342, 347-348; *Ogden* v. *United States*, 112 Fed. 523, 527 (C. C. A. 3); *United States* v. *Dressler*, 112 F. (2d) 972, 978 (C. C. A. 7).

8. *The indictment plainly charges a conspiracy to commit a substantive offense which itself necessarily involves concerted action. It is in no way comparable with the indictment in the Manton case.*—It is frivolous to assert that this indictment does not charge a conspiracy to commit a crime defined by the bribery statute, 18 U. S. C. sec. 91. The Government asserts that the count was laid under that portion of the conspiracy statute which penalizes conspiracies "to defraud the United States". But to support this contention it quotes only from the first half of the charging paragraph (R. 28). It omits entirely from the charging paragraph the second half beginning with the words "that is to say". As the most casual comparison will show, this second half charges violation of the substantive offense of bribery of a United States officer almost word for word in the language of Title 18 U. S. C. sec. 91, an offense necessarily involving concert of parties. It is plain that the prosecuting attorney in seeking to obtain the benefit of the liberal rules of evidence incident to a conspiracy charge, was confronted with the difficulty that bribery was in truth the substantive offense asserted to be the object of the conspiracy. Hence, under the cases cited in the petition (p. 51) the conspiracy count would not lie. In an obvious effort to avoid the difficulty, he merely inserted a general characterization of the objective as being the defrauding of the United States. It

is submitted that no approval should be thus afforded to resort to such a flimsy subterfuge.

Clearly, there is no justification for the omission of the second half of this charging paragraph in the Government's quotation of the charge. The Circuit Court of Appeals, in stating the substance of the indictment includes the second half as an integral part of the charge (R. 1119-1120). It is clear that the phrase "that is to say" is not a videlicet marking the termination of the charging part and all the subsequent matter in this paragraph being part of the same sentence is correctly to be regarded as an essential part of the charge. *Browne* v. *United States*, 145 Fed. 1, 5 (C. C. A. 2).

The decision in *United States* v. *Manton*, 107 F. (2d) 834, cert. den. 309 U. S. 664, invoked by the Government (Gov't Br. 26-27), has no relevance here. The indictment there examined is in no way comparable. In brief substance it charged a conspiracy having two objectives: (1) to obstruct and impede the due administration of justice—a substantive offense (18 U. S. C. sec. 241); and (2) to defraud the United States of the conscientious services of Manton. The charging part of the purported indictment here involved charges a conspiracy with but one objective: To defraud the United States of the conscientious services of an Assistant United States Attorney—not named—by offering or promising or causing to be offered or promised, money or other things of value to an officer of the United States with intent to influence his decision (a substantive offense necessarily involving concerted action by a plurality of agents for its commission—18 U. S. C. sec. 91).

Manifestly it is impossible in comparing the two indictments to ignore the second half of the charging part of the indictment here involved as the Government has sought to do in its brief (Gov't Br. 26).

It is important also here to note that the detailing of the means whereby the conspiracy was to be accomplished, contained in paragraph 15 of the indictment (R. 29) and to which the Government refers (Gov't Br. 26),[5] is entirely separate, and to be distinguished, from the second half of paragraph 14, the charging part of the indictment (R. 28).

9. *The record is utterly devoid of evidence to support the verdict against petitioner.*—In our petition, we have carefully analyzed the evidence cited by the Circuit Court of Appeals (Pet. 33-46). The Government does not even purport to contest or in any way deny any feature of that analysis. However, by resort to sweeping generalities, accompanied by copious record citations, it now seeks to create the impression that the record amply supports the conviction.

We do not seek to cast upon this Court the burden of reviewing the whole record in this case. We do believe that the analysis in the Petition adequately shows that the facts relied upon by the Circuit Court of Appeals were insufficient to sustain the verdict against petitioner.

One salient question of law with regard to the evidence is clearly presented by this record. In the Petition, after appraising the only evidence deemed to afford any possible basis for assertion of knowledge of the alleged conspiracy on the part of the petitioner, the Government was challenged to indicate any other evidence, sufficient in law to show such knowledge (Pet. 47-50).

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[5] Indicative of the universal confusion as to the meaning of this indictment is the Government's reference to paragraph 15 (R. 29) as alleging a "solicitation of money to be paid" whereas the means alleged are that the conspiracy was to be accomplished by the solicitation of promises. Indeed, as pointed out in the petition (p. 6), the prosecuting attorney stated (R. 154) "This indictment follows very closely the language in Section 91, namely, that there was a conspiracy on foot to solicit certain persons to make promises."

The only record references which might possibly be regarded as directed to this challenge are the two following statements (Gov't Br. 6, 9):

> "One of Kaplan's men, by following Kaplan and by questioning him, ascertained that Kaplan was periodically contacting Kretske and Glasser (R. 455, 457, 462)."
>
> "There is direct evidence of Glasser's extra-official association and cooperation with Kaplan and with other large-scale violators who, upon payment of money to Kretske, Horton, or to one Miller, were successful in avoiding prosecution (R. 302, 304, 457, 462, 563, 709-711)."

The record references to support the first statement of the Government show nothing more than three unexplained meetings referred to at R. 476 and discussed in the Petition (p. 48).

The first two citations under the Government's second statement, R. 302 and 304, merely show conference by Glasser in his official capacity with an accused bootlegger in Glasser's office. This testimony of the Government witness discloses no extra-official association or cooperation with him on the part of Glasser. The next two citations of the second statement, R. 457 and 462, are identical with those made in support of the first-quoted statement and discussed immediately above. The evidence at R. 563 is referred to in the Petition, p. 48, 3d paragraph, and discussed (Pet . p. 49). It may be noted that this witness is the same Svec who had earlier participated in the attempt to entrap Glasser (Pet. 5-6). The final citation by the Government, R. 709-711, shows merely that immediately after the arraignment of Frank, Peter, and Mike Hodorowicz, Glasser was seen with the same defendants in a public corridor of the Federal Building. It is also to be noted that none of these

record citations in any way show "payment of money to Kretske, Horton or to one Miller."

The Government, in its statement of facts, finds no difficulty in making numerous record citations purporting to support sweeping statements of fact. Yet on this single and distinct proposition the Government has failed utterly to point out any evidence, direct or circumstantial, from which participation by the accused may properly be inferred (See Gov't Br. 42).

Importance of the Case.—Definite conflicts between circuits are presented by the petition. Aside from these questions of law which should be settled by this Court, the case presented is highly important because of the inherent threat to all officers charged with the duty of law enforcement. It is plain that the petitioner—officially vested with a certain degree of discretion necessarily shared with grand juries, courts, and commissioners—has been subjected to accusation and trial for his conduct as an officer without showing of any wrongful action on his part.

Conclusion.

Wherefore, it is respectfully submitted that the petition for certiorari should be granted.

HOMER CUMMINGS,
WILLIAM D. DONNELLY,
Counsel for Petitioner.

March, 1941.

APPENDIX

United States District Court, Northern District of Illinois

Cause No. ..... (Date) Sept 29 39

Title of Cause .....

Df 4 1
Dft 1 | 39

Brief Statement of Motion } .....

In Grand Jury return in added.
Indictments in open Court 11/30/39

Name of moving Counsel } .....

Representing .....

Name of opposing Counsel (if any) } .....

Order Designating Times
Days of Sept Term 1939

Dft

Hand this memorandum to the Clerk.
Counsel will not rise to address the Court until motion has been called.

No. 796

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

DANIEL D. GLASSER,

Petitioner,

v.

UNITED STATES OF AMERICA.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

SUGGESTION OF A DIMINUTION OF THE RECORD AND MOTION FOR A WRIT OF CERTIORARI

HOMER CUMMINGS,
WILLIAM D. DONNELLY,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 796

DANIEL D. GLASSER,

Petitioner,

v.

UNITED STATES OF AMERICA.

SUGGESTION OF A DIMINUTION OF THE RECORD AND MOTION FOR A WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

Your petitioner, Daniel D. Glasser, suggests that there is a diminution of the record in the above-entitled cause and respectfully moves that this Honorable Court issue its writ of certiorari herein directed to the United States District Court for the Northern District of Illinois, Eastern Division, commanding that court to certify and send to this Court certain papers which are of record in that court in this cause. These papers are particularly described as follows:

> "Verdict filed March 8, A. D. 1940. In Re: United States vs. Daniel Glasser, et al., D. C. 31825."

A photo-lithograph copy is attached hereto. (The duly certified copy has been filed with the Clerk of this Court.)

Reason for this Motion.

1. This verdict is a part of the record and is important on the merits of a question raised by the petition for certiorari now pending before this Court.

2. One of the questions raised in this Court on petition for certiorari requires for its proper understanding and decision that the verdict above-referred to be before this Court.

WHEREFORE your petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States District Court for the Northern District of Illinois, Eastern Division, commanding that Court to certify and send to this Court the paper above-referred to.

HOMER CUMMINGS,
WILLIAM D. DONNELLY,
Counsel for Petitioner.

I, William D. Donnelly, counsel for the petitioner in the above-entitled cause, do solemnly swear that the facts recited in the foregoing "Suggestion of a Diminution of the Record and Motion for a Writ of Certiorari" are true.

WILLIAM D. DONNELLY.

Subscribed and sworn to before me this 27th day of March, 1941.

RUTH M. KELM,
[SEAL.] *Notary Public, D. C.*

My Commission Expires December 2, 1945.

THE UNITED STATES

vs

No. 31825

DANIEL D. GLASSER
NORTON I. KRETSKE
ALFRED E. ROTH
ANTHONY HORTON alias TONY HORTON
LOUIS KAPLAN

We, the Jury, find the Defendants, DANIEL D. GLASSER, NORTON I. KRETSKE, ALFRED E. ROTH, ANTHONY HORTON alias TONY HORTON, LOUIS KAPLAN guilty as charged in the indictment.

Walter Nelson
Leslie S. Alexander.
Arthur A. Campbell.
Virginia R Haven
Cornelius Jacobus.
William J. Jungels
Mildred M. Kelly
Teresa M. Lawson
Bernice G Lund
Theresa Rew
Margaret W. Rieser
Edward F. Young.